

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 20, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 46, HB 205, HB 250, HB 254,
1/17/2005
Executive Action: HB 250-Do Pass, HB 232-Do Pass
HB 205-Do Pass As Amended,
HB 196-Do Pass As Amended, HB 254-
Do Pass As Amended

HEARING ON HB 46

REP. JOHN PARKER, HD 23, GREAT FALLS

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on **HB 46**, Crime of vehicular homicide. **REP. PARKER** reported to the committee that he brought this bill at the request of the Department of Justice. He also submitted an amendment for consideration committee members.

EXHIBIT(juh15a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 62}

Proponents' Testimony:

Bill Muhs, Mothers Against Drunk Driving (MADD), rose in strong support of HB 46 and spoke briefly about how this bill would balance the punishment with the crime. He stated to the committee members that only four other states do not have a vehicular homicide law and even those states have more severe sanctions than Montana.

EXHIBIT(juh15a02)

{Tape: 1; Side: A; Approx. Time Counter: 62 - 109}

John Connor, Attorney General Office, rose in support of HB 46. He stated that this bill came about due to the Department and Justice in concert with the Montana County Attorneys Association. **Mr. Connor** stated, "...driving drunk is not a disease, it is a choice."

{Tape: 1; Side: A; Approx. Time Counter: 109 - 155}

Jim Smith, Montana County Attorneys' Association, Montana Sheriffs' and Peace Officers' Association, rose in strong support of HB 46. He submitted to the committee that, "...the County Attorneys want this bill because they deal with this day-to-day."

{Tape: 1; Side: A; Approx. Time Counter: 155 - 178}

Diane Rieger, self, related to the committee members the tragic story of her daughter's death due to a drunk driver. She also stated that the offender may be getting paroled on the same day anniversary of her daughter's death--March 20, 2005 after five years of incarceration.

EXHIBIT(juh15a03)

{Tape: 1; Side: A; Approx. Time Counter: 178 - 290}

Jim Kembel, Montana Police Protective Association, stood in support of HB 290.

{Tape: 1; Side: A; Approx. Time Counter: 290 - 302}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. LANGE and **REP. PARKER** discussed the difference between negligent homicide and criminal negligence referring to 45-5-104.

REP. NOENNIG spoke with **REP. PARKER** about the intent of HB 46 with regard to the "purposefully and knowingly" portion of the bill and the current statute. **REP. PARKER** also stated that there is a deterrent effect with this type of legislation.

REP. NOENNIG spoke with **Mr. Connor** regarding the deterrent effect of this bill. **Mr. Connor** spoke of how this bill would allow prosecution of someone driving drunk; it is also designed to be used when no alcohol is involved but obvious negligence would be the issue. In present statutes; gross deviation of a normal standard is the applicable language to be used when prosecuting an offender.

REP. NOENNIG and **Mr. Connor** continued their conversation regarding the mental state of someone impaired and negligent homicide being charged by the prosecutor.

REP. HARRIS continued the questioning Mr. Connor regarding the language in Section 1, Line 11 which relates to the "negligence" homicide and inserting "vehicular" homicide.

REP. KOOPMAN inquired of the sponsor to refer to Line 11 as it relates to Title 45 of the MCA. **REP. GUTSCHE** then spoke with the sponsor regarding gross deviation of a normal standard and prosecutorial discretion as it relates to HB 46.

REP. GUTSCHE did ask Mr. Muhs how many other states have vehicular homicide statutes. **Mr. Muhs** responded, "...Montana is one of only five states that does not have..." a statute for vehicular homicide.

REP. RICE proceeded to question Mr. Connor about any positive results that have been seen from the increased penalties. And also do, "... those people who feel they are invincible, do they ever get the message?"

Mr. Connor stated to REP. RICE, "...so far the results have been good, but it can get better." He also stated for informational purposes; the average BAC in Montana is .17%.

{Tape: 1; Side: A; Approx. Time Counter: 302 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 144}

Closing by Sponsor:

REP. PARKER closed the hearing on HB 46 by stating, "...this bill will provide accountability."

{Tape: 1; Side: B; Approx. Time Counter: 144 - 171}

HEARING ON HB 205

REP. JOHN PARKER, HD 23, GREAT FALLS

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on **HB 205**, Require bond forfeitures in felonies to be deposited in general funds.

[**EXHIBIT**](#)(juh15a04)

{Tape: 1; Side: B; Approx. Time Counter: 171 - 193}

Proponents' Testimony:

Jim Oppedahl, Administrator, Montana Supreme Court, stated that this bill comes from the District Court Council and they recommendations that Council has made.

{Tape: 1; Side: B; Approx. Time Counter: 193 - 227}

Opponents' Testimony: None

Informational Testimony:

Mary Phippen, Montana Association of Clerks of Court, informed the committee of some technical concerns. She produced an amendment that would change the effective date to July 1, 2005.

[**EXHIBIT**](#)(juh15a05)

{Tape: 1; Side: B; Approx. Time Counter: 227 - 247}

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. PARKER closed the hearing on HB 205.

{Tape: 1; Side: B; Approx. Time Counter: 247 - 259}

HEARING ON HB 250

REP. ARLENE BECKER, HD 52, BILLINGS

Opening Statement by Sponsor:

REP. ARLENE BECKER (D), HD 52, opened the hearing on HB 250, Revise privacy in communications for emergency calls.

REP. BECKER explained to the committee that with the current systems that are in use in hospitals, people who call in emergencies are required to be notified that they are being recorded. This recording takes approximately 15 seconds which is time lost in the case of an emergency.

{Tape: 1; Side: B; Approx. Time Counter: 259 - 298}

Proponents' Testimony:

Kathy Kenyon, Deaconess Billings Clinic, rose in support of HB 250. She informed the committee members that even medical doctors who are calling in an emergency are subjected to the 15 second recording. Ms. Kenyon surmised that people already know they are being recorded.

{Tape: 1; Side: B; Approx. Time Counter: 298 - 345}

David Martin, Montana Newspaper Association, Lee Enterprises, rose in support of HB 250. He advised the committee to look at Article 2, Section 8 and 9 of the Montana State Constitution that applies to the "public right to know." This bill would fall within the parameters of said Article, therefore, his association is in support of HB 250.

{Tape: 1; Side: B; Approx. Time Counter: 345 - 370}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. BECKER closed the hearing on HB 250.
{Tape: 1; Side: B; Approx. Time Counter: 370 - 405}

HEARING ON HB 254

REP. CHRISTOPHER HARRIS, HD 66, BOZEMAN

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on HB 254, Civil penalty for not writing legible prescriptions.

[EXHIBIT\(juh15a06\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 405 - 500}

Proponents' Testimony:

Patrick Melby, Montana Medical Association, rose in support of HB 254 with the amendments included.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 22}

Mary McHugh, Montana Dental Association, rose in support of HB 254.

{Tape: 2; Side: A; Approx. Time Counter: 22 - 32}

Pat Wise, Montana Nurses Association, rose in support of HB 254.

{Tape: 2; Side: A; Approx. Time Counter: 32 - 39}

John Flink, Montana Hospital Association, rose in support of HB 254.

{Tape: 2; Side: A; Approx. Time Counter: 39 - 49}

Gloria Hermanson, Montana Academy of Opthamologists, Montana Society of Otolaryngology (ENT), Montana Association of Ambulatory Surgery Centers, rose in support of HB 254 with the amendments that the Montana Medical Association has proposed.

{Tape: 2; Side: A; Approx. Time Counter: 49 - 57}

Jim Smith, Montana Pharmacy Association, rose in support of HB 254 and stated that more than 80% of prescriptions are legible and understandable. However, for those that are not legible, the pharmacists are required to contact the doctors, which takes more time.

{Tape: 2; Side: A; Approx. Time Counter: 57 - 90}

Opponents' Testimony: None

Informational Testimony:

Peter Wolfgraham, Pharmacist, gave examples to the committee of prescriptions that doctors had written.

[EXHIBIT\(juh15a07\)](#)

[EXHIBIT\(juh15a08\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 90 - 122}

Questions from Committee Members and Responses:

REP. RICE asked Mr. Wolfgraham if he has called doctors for verification of prescriptions before filling. **Mr. Wolfgraham** replied, "Yes."

{Tape: 2; Side: A; Approx. Time Counter: 122 - 131}

Closing by Sponsor:

REP. HARRIS closed the hearing on HB 254.

{Tape: 2; Side: A; Approx. Time Counter: 131 - 141}

EXECUTIVE ACTION ON HB 232

Motion: **REP. NOENNIG** moved that HB 232 DO PASS.

Discussion:

The discussion among committee members was centered around the Fiscal Note and the termination date.

Vote: Motion carried unanimously.

{Tape: 2; Side: A; Approx. Time Counter: 141 - 281}

EXECUTIVE ACTION ON HB 250

Motion/Vote: **REP. BECKER** moved that HB 250 DO PASS. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 281 - 297}

EXECUTIVE ACTION ON HB 205

Motion: **REP. PARKER** moved that HB 205 DO PASS.

Discussion:

Motion: **REP. PARKER** moved that HB 205 BE AMENDED.

Discussion:

Mr. MacMaster explained the amendment as to Page 1, Line 26.

Substitute Motion: REP. PARKER made a substitute motion that HB 205 BE AMENDED with a CONCEPTUAL AMENDMENT "CHANGING THE DATE."

Discussion:

REP. PARKER explained the Conceptual Amendment.

Vote: Motion carried unanimously voice vote.

Motion/Vote: REP. PARKER moved that HB 205 DO PASS AS AMENDED.

Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 297 - 370}

EXECUTIVE ACTION ON HB 254

Motion: REP. HARRIS moved that HB 254 DO PASS.

Discussion:

Motion: REP. CLARK moved that HB254 BE AMENDED with AMENDMENT 254-01.

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Vote: Motion HB 25 carried unanimously by voice vote.

Motion: REP. HARRIS moved that HB 254 DO PASS AS AMENDED.

Discussion:

The committee discussed the bill in its entirety especially the effective date of implementation and whether or not this is "creeping crimes" or "code clutter."

Vote: Motion carried 16-2 by roll call vote with REPS. KOOPMAN and RICE voting no.

{Tape: 2; Side: A; Approx. Time Counter: 370 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 154}

EXECUTIVE ACTION ON HB 232

REP. HARRIS requested that action on HB 232 be postponed.
{Tape: 2; Side: B; Approx. Time Counter: 154 - 158}

EXECUTIVE ACTION ON HB 243

Motion: **REP. STOKER** moved that HB 243 DO PASS.

Discussion:

The committee discussed at great length the different arresting agencies involved, the fiscal note, the differences between parole violators and probation violators, and who is responsible for each.

There was some discussion regarding the time frame involved; date of detainment, the date of a plea or pre-sentencing and the date of the verdict whether it is done orally or at the later time of written sentencing. **REP. NOENNIG** explained to the committee members the three stages that an offender may face regarding the time of detainment:

- 1) The finding of guilt or acceptance of a plea.
- 2) The oral pronouncement of a verdict.
- 3) The written entry of a judgement.

Motion: **REP. PARKER** moved that HB 243 BE AMENDED with a CONCEPTUAL AMENDMENT TO "CHANGE THE TITLE TO MATCH Line 30."

Vote: Motion carried unanimously by voice vote.

Motion/Vote: Motion to RESCIND ACTION ON HB 243 carried 15-3 by voice vote with REPS. LANGE, NOENNIG, and PARKER voting no.

CHAIRMAN RICE appointed a four-member subcommittee to resolve the differences and to involve the DOJ and DOC with various outside groups with an interest in HB 243 to meet and resolve the unanswered questions.

The four-member subcommittee will consist of: **REPS. PARKER, GUTSCHE, NOENNIG** and **LANGE** (who will be chairman).

{Tape: 2; Side: B; Approx. Time Counter: 158 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 158}

EXECUTIVE ACTION ON HB 245

Motion: REP. LANGE moved that HB 245 DO PASS.

Discussion:

Motion: REP. CLARK moved that HB 245 BE AMENDED with AMENDMENT 245-01.

[EXHIBIT](#)(juh15a09)

Discussion:

Mr. MacMaster explained the amendment to the committee members. The members discussed the language as to the parental approval regarding piercings, the fact that piercings can "close" if not used. The piercings made through medical procedures and if those medical procedures would be affected by this bill was also discussed.

Motion/Vote: Substitute motion to RESCIND ACTION ON HB 245 carried unanimously by voice vote.

{Tape: 3; Side: A; Approx. Time Counter: 158 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 14}

EXECUTIVE ACTION ON HB 196

Motion: REP. MCGILLVRAY moved that HB 196 DO PASS.

Discussion:

Motion: REP. NOENNIG moved that HB 196 BE AMENDED with AMENDMENT 196-01.

[EXHIBIT](#)(juh15a10)

Discussion:

Mr. MacMaster explained the amendment to the committee members. There was some discussion by the Representatives as to the requirement of a signature and social security number on the document.

Vote: Motion carried unanimously by voice vote.

(REP. EVERETT LEFT THE ROOM)

Motion: REP. GUTSCHE moved that HB 196 DO PASS AS AMENDED.

Discussion:

REP. STOKER stated that he was concerned that this is a case of "code clutter."

Vote: Motion carried 14-4 by roll call vote with REPS. EVERETT, KOOPMAN, RICE, and STOKER voting no.

(REP. EVERETT voting by proxy vote)

{Tape: 3; Side: B; Approx. Time Counter: 14 - 200}

ADJOURNMENT

Adjournment: 11:15 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh15aad0.PDF](#))